LIBRARY
SUPREME COURT, U. S.

FILED
DEC 21 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-973

THE DUNLOP COMPANY, LIMITED, *Petitioner*

v.

KELSEY-HAYES COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETER D. EHRENHAFT
Fried, Frank, Harris,
Shriver & Kampelman
600 New Hampshire Ave.,
N.W.
Washington D. C. 20037
Tel. (202) 965-9400

ELLSWORTH H. MOSHER
Stevens, Davis, Miller
& Mosher
1911 Jefferson Davis Highway
Arlington, Virginia 22202
Tel. (703) 920-8900

JOHN A. YOUNG
127 West Berry Street
Fort Wayne, Indiana 46802
Tel. (219) 742-6214

Attorneys for Petitioner

December 21, 1973

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutory Provisions Involved	4
Statement of the Case	5
Reasons for Granting the Writ	7
1. Section 102 of the Patent Act should be interpreted in depth for the first time by this Court	7
2. The Court should provide guidelines for the harmonization of the Patent Act with standards in other federal laws concerning the suitability of new devices offered to the public, particularly in the field of safety.	11
3. The Court should consider the apparent bias of the courts of the Sixth Circuit against patentees attempting to assert their rights against the automotive industry.	13
Conclusion	16
Appendix (Opinion of the Court of Appeals)	App. A
Appendix (Opinion of the District Court)	App. B
Appendix (Order and Judgment of the District Court	App. C
Appendix (Order of Mr. Justice Stewart Extending Filing Time)	App. D
Appendix (49 CFR §§ 571.105 & 571.105a)	App. E

CITATIONS

CASES: Page

Brenner v. *Manson*, 383 U.S. 519, 534-5 (1966) 13
Clark v. *Buffum*, 51 App. D.C. 212, 277 Fed. 611 (App. D.C. 1922) 12
Corona Cord Tire Co. v. *Dovan Chemical Corp.*, 276 U.S. 358, 382-3 (1927) 9
Etten et al. v. *Kauffman et al.*, 121 F.2d 137 (3d Cir. 1941) 12
FMC Corp. v. *Myers & Bros. Co.*, 384 F.2d 4, 9 (1967). 9
GM Corp. v. *Bendix Aviation Corp.*, 123 F. Supp. 506, 520 (N.D. Ind. 1954) 12
Graham v. *John Deere Co.*, 383 U.S. 1 (1966) 2, 8
Kelsey-Hayes Co. v. *The Dunlop Co.*, No. 73-816 2
Koehring Co. v. *National Automatic Tool Co.*, 362 F.2d 100, 103-4 (7th Cir. 1966) 9
McCullough Tool Co. v. *Well Surveys, Inc.*, 343 F.2d 381, 394 (10th Cir. 1965) 9
McKenzie v. *Cummings*, 24 App. D.C. 137 (1904) 12
National Latex Prods. Co. v. *Sun Rubber Co.*, 274 F.2d 224, 231-9 (6th Cir. 1959) 9
Taylor v. *Swingle*, 136 F.2d 914 (CCPA 1943) 12
U.S. v. *Adams*, 383 U.S. 39 (1966) 8

MISCELLANEOUS:

Bureau of National Affairs, Patent, Trademark & Copyright Journal, No. 144, p. F-1 (Sept. 13, 1973) 14
Federico, "Commentary on the New Patent Act," 35 U.S.C.A., at 17-18 (1954) 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No.

THE DUNLOP COMPANY, LIMITED, *Petitioner*

v.

KELSEY-HAYES COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on August 24, 1973, in Appeal No. 72-1892 entitled *The Dunlop Company, Limited* v. *Kelsey-Hayes Company.*

OPINIONS BELOW

The opinion of the Court of Appeals, reprinted in Appendix A, is reported at 484 F.2d 407 and 179 U.S. P.Q. 129 (6th Cir. 1973). The unreported opinion of the United States District Court for the Eastern Dis-

trict of Michigan, Southern Division, is reprinted in Appendix B. The final order and judgment of the District Court is reprinted in Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (Appendix A) was entered on August 24, 1973. A timely motion for extension of time to file this petition was granted by Mr. Justice Stewart on November 8, 1973, the time being thereby extended until December 21, 1973 (Appendix D).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The appellee/cross-appellant below has filed a petition for certiorari to review that portion of the judgment below affirming the dismissal of some of its defenses and counterclaims. *Kelsey-Hayes Co.* v. *The Dunlop Co.*, No. 73-816. Petitioner respectfully suggests that the petitions be considered together.

QUESTIONS PRESENTED

The Patent Act of 1952 (35 U.S.C. § 1 et seq.) authorizes the grant of a patent for an invention unless "the invention" was anticipated in one of the several ways enumerated in 35 U.S.C. § 102 or is "obvious" within the meaning of § 103. Seven years ago this Court, in *Graham* v. *John Deere Co.*, 383 U.S. 1, extensively defined the concept of "obviousness" for the purposes of § 103. The present case presents parallel questions concerning the equally critical conditions for patentability under § 102, which this Court has never construed:

1. What standard must the Patent Office and the courts apply in determining whether an "invention" is

anticipated under § 102? More particularly, can experiments, admitted to be incomplete and then abandoned by their developer, be regarded as an anticipation of "the invention" for which a patent is sought or has been obtained? The point has never been decided by this Court. Lower court opinions provide no clear guidelines.

2. In determining whether alleged prior art constitutes anticipation under § 102, must the Patent Office and the courts consider guidelines from other areas of the law reflecting intense public concern about such matters as the safety of automobiles? In the context of this case, can an automobile brake that admittedly operated successfully only occasionally, and which those who developed it conceded was only 75-85% complete, be considered an anticipation under § 102, thus undermining the purposes of other legal norms concerned with highway safety with which the Patent Act should be harmonized?

3. In determining whether alleged prior art constitutes anticipation under § 102, may the courts aggregate entirely disparate experimental applications of a generic mechanical principle and so hold that the resulting "cumulative effect" constitutes anticipation? The courts below established a novel, hitherto unknown and wholly erroneous principle of cumulative effect that is contrary to the purposes, text and prior lower court interpretations of § 102.

4. Petitioner has reason to believe that its suit against a supplier to the U.S. automotive industry was not accorded "equal justice under law." It has found no case in which a patentee has successfully asserted a patent against that industry in the courts of

the Sixth Circuit since the Patent Act of 1952 was adopted. Is this another case in which those courts have been influenced by extraneous concern for a powerful local industry to invalidate an outsider's patent that made a significant contribution to automobile safety?

5. Respondent has filed a petition for certiorari (No. 73-816) that presents questions relating to the licensing practices of petitioner. Petitioner does not concede that the questions presented by respondent in its petition are properly supported by the record made in the courts below. Nevertheless, it does not object to the Court's consideration of those issues in the light of that record if the Court will also consider the questions petitioner is presenting. Petitioner utterly rejects as false and misleading respondent's suggestions that any of its patents were obtained or enforced with anything less than the complete disclosure required by law. Dunlop is, therefore, also willing not to object to respondent's request that these specious issues be considered by the Court if the Court will review the entire decision below.

STATUTORY PROVISIONS INVOLVED

In pertinent part, the following sections of the Patent Act of 1952 are involved in this petition:

35 U.S.C. § 102. CONDITIONS FOR PATENTABILITY; NOVELTY AND LOSS OF RIGHT TO PATENT

"A person shall be entitled to a patent unless—

"(a) the invention was known or used by others in this country . . . before the invention thereof by the applicant for patent, or

"(b) the invention was . . . in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

. . . .

"(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. . . ."

Petitioner is also referring to standards for automotive brakes adopted pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §1381, et seq., and has reproduced sample standards in Appendix E.

Respondent has set out in Appendix A to its petition in No. 73-816 the relevant portions of the Sherman Act on which its defenses and counterclaims rested.

STATEMENT OF THE CASE

This is a patent case concerning disc brakes particularly for automotive vehicles. The patentee is Dunlop, Limited ("Dunlop"), an English company. It pioneered the successful application of disc brakes to passenger automobiles. Its patent position has been recognized throughout the world. Disc brakes have become the type of brake preferred by automobile manufacturers everywhere. Seventy percent of all automobiles produced today are equipped with such brakes, since they are more effective than the traditional arcuate shoe or drum brake in overcoming the "brake fade" caused by the accumulation of heat that develops from repeated braking. Although experimental work with disc brakes dates to the 1940s, it was Dunlop's work (that matured into the patent in suit) that first resulted in a viable disc brake, initially for racing cars and

eventually adopted by the European passenger car producers. But Dunlop's attempt to obtain recognition from the American automobile industry for its significant contribution to the art ran into a new standard for interpreting the Patent Act adopted by the courts below to hold Dunlop's key patents invalid. Dunlop has reason to believe that the decisions below were part of a pattern of the courts of the Sixth Circuit to protect the automobile industry from the patent claims of outsiders.

This case concerns Dunlop's opposed cylinder fixed caliper disc brake patent No. 2,790,516 ("516"), one of a number included upon issuance in 1957 in an exclusive license that had been granted by Dunlop to the Bendix Corporation ("Bendix") in 1956. Bendix, in turn, granted a sublicense to the respondent, Kelsey-Hayes Company ("Kelsey"), a supplier of brakes to Ford, Chrysler and American Motors. Dunlop gave Kelsey substantial assistance in the development of disc brakes for its customers. Ford, one of Kelsey's major customers, welcomed the new brakes and advertised them extensively. Nevertheless, Ford advised respondent it would not pay for royalties to Dunlop included in Kelsey's price of brakes sold to Ford. Kelsey then cancelled its sublicense. This suit followed, claiming infringement of four of Dunlop's disc brake patents.[1] The action was brought in Detroit in the U.S. District Court for the Eastern District of Michigan, Southern Division. Jurisdiction was based on 28 U.S.C. §§ 1338(a) and 1400(b).

---

[1] Other suits have also been brought more recently on the '516 patent against the Budd Company, the Bendix Corporation, and General Motors Corporation. Those suits have been stayed pending the outcome of this suit.

Although petitioner alleged infringement of four Dunlop patents, this petition seeks review of the decision below only with respect to the '516 patent. The District Court held that patent invalid and not infringed.[2] The Court of Appeals affirmed the holding of invalidity of the '516 patent and stated that this disposition avoided the need for consideration of the infringement issue.

Kelsey's misuse defenses and counterclaims, based on allegations of fraud and antitrust violations, were dismissed by the District Court, which action was affirmed by the Court of Appeals. Kelsey is seeking review of that action by its petition in No. 73-816.

REASONS FOR GRANTING THE WRIT

1. Section 102 of the Patent Act Should Be Interpreted in Depth for the First Time by this Court.

The Patent Act of 1952 is a cornerstone of American law designed to spur invention and economic development. Yet the Act has rarely received authoritative construction by this Court. This Court has never provided the Patent Office and lower courts with an in-depth interpretation of § 102 of the Act, one of the two major tests for patentability (the other being that of § 103). This case presents a particularly suitable occasion for such an interpretation as the patent in suit relates to an invention of widespread application and use under circumstances in which human life and limb are constantly at stake.

---

[2] The District Court held two of the other three patents invalid and the valid patent not infringed. Dunlop sought review of that decision as to the '516 patent and one other in the Court of Appeals, but is limiting this petition to the decision regarding the '516 patent.

In *John Deere*,[3] this Court made an extremely valuable contribution to patent jurisprudence by setting forth with clarity and precision the tests for obviousness to be applied under 35 U.S.C. § 103. The Court has never done likewise with respect to the equally important statutory provisions of 35 U.S.C. § 102.[4]

Section 102 states that a person shall be entitled to a patent unless the invention

> "(a) . . . was *known* or *used* by others . . . before the invention thereof by the applicant;
>
> (b) . . . *was in public use* or on sale . . . more than one year prior to the application for patent; or
>
> (g) . . . was *made* in this country *by another who had not abandoned* [it before the applicant's invention]." (emphasis added)

These concepts express the doctrine of "anticipation." Interpretation of the relatively simple words of § 102: "known," "used," "in public use" and "made by another who had not abandoned," supports a considerable literature of lower court opinions. But their proper individual meaning and relationship with one another has never received the attention of this Court since their inclusion in the current Patent Act.

This case raises the question of whether Dunlop's opposed cylinder fixed caliper disc brake was "known," "used," "in public use" or "made by another who had

---

[3] *Graham* v. *John Deere Co.*, 383 U.S. 1 (1966).

[4] Although *U.S.* v. *Adams*, 383 U.S. 39 (1966), alludes to § 102, that case was decided together with *Deere* and focused primarily on § 103.

not abandoned it" by someone other than Dunlop's engineers before they claim to have invented it or filed for a U.S. patent on their invention.[5] Respondent defended against petitioner's infringement suit on the theory that Dunlop's invention was "known," "used," etc., because some hitherto unpublished experiments with a variety of disc brake devices were conducted by the Goodyear Company. The courts below could not—and did not—find that any one of those experiments fully anticipated Dunlop's invention. It is an established principle that anticipation must have a degree of completeness[6]—or in the technical language of patent jurisprudence, be an actual reduction to practice[7]—sufficient to enable the person who anticipated to obtain a patent on the invention (assuming all other tests of patentability could be met). In fact, as Good-

---

[5] The courts below never decided which of these subsections applied to the facts of this case. They simply found that all together they covered the "Goodyear work" described in the text, without regard to the differing standards of proof for each subsection. See District Court opinion at Appendix B; p. 30a; Court of Appeals opinion at Appendix A, p. 13a.

[6] See, e.g., a decision of the Court of Appeals for the Sixth Circuit which that court failed to follow in this case: *FMC Corp.* v. *Myers & Bros. Co.*, 384 F.2d 4, 9 (1967), cert. denied, 390 U.S. 988 (1968) (only a "non-secret use of a *completed* and operative invention in its natural and intended way is a . . . 'use' within the meaning of this section." Emphasis supplied.) See also, to the same effect, *National Latex Prods. Co.* v. *Sun Rubber Co.*, 274 F.2d 224, 231-39 (6th Cir. 1959), cert. denied, 362 U.S. 989 (1960); *Kochring Co.* v. *National Automatic Tool Co.*, 362 F.2d 100, 103-4 (7th Cir. 1966); *McCullough Tool Co.* v. *Well Surveys, Inc.*, 343 F.2d 381, 394 (10th Cir. 1965), cert. denied, 383 U.S. 933 (1966).

[7] Cf. *Corona Cord Tire* v. *Dovan Chemical Corp.*, 276 U.S. 358, 382-3 (1927), predating the 1952 Patent Act but expressing the principle § 102 was intended to codify. See Federico, "Commentary on the New Patent Act," in 35 U.S.C.A. at 17-18 (1954).

year conceded its work was only 75-85% complete and voluntarily abandoned, no applications for patents on any of its experimental devices were filed by Goodyear or its employees.

This case presents the novel issue of whether several independent and incomplete devices may be cumulated to form an anticipation of a valuable patent. The courts below, in the bright light of hindsight, attributed a cumulative significance to several allegedly anticipatory devices which those concerned with that work did not attribute to it at any time until this litigation arose. This prior art was no contribution to the automotive vehicle braking industry. Its sole utility was to defeat Dunlop's otherwise-recognized '516 patent.

In holding the '516 patent anticipated, the courts below gave a cumulative effect to four isolated instances of alleged prior use by the Goodyear company, of whose work both petitioner and respondent were unaware until long after the '516 patent issued. Those disparate uses related to: (1) a radar trailer brake, (2) the "Hawley" automobile brake, (3) a helicopter rotor brake, and (4) a wind tunnel fan brake. The radar trailer brake was never adequately tested and, in any event, was replaced with an electric brake by the Army when the trailer was delivered. Neither the helicopter rotor brake nor the wind tunnel fan brake can fairly be regarded as representative of the conditions encountered in an automotive vehicle; moreover, both broke down or were destroyed in use and made no impact whatever on the automotive braking industry. Nevertheless, the courts below gave these individually inadequate devices the effect of anticipation by lumping them together with Hawley's automobile brake. Petitioner's position is that the Hawley automobile brake,

alone, either does or does not "anticipate" under § 102. If it does, then the other brakes are superfluous. If it does not, then the other brakes cannot make it anticipate by their cumulative effect. Petitioner has consistently maintained—and the courts below have not found otherwise—that the Hawley automobile brake was an incomplete experiment, abandoned by Goodyear, and ultimately discarded. As such, it could not properly be considered an anticipation of Dunlop's brake.

Section 102 says that a patent cannot be granted if "the invention" was, in a word, anticipated. The concept would seem to mean that the full equivalent of "the invention" must have been known or used in the past. For those purposes no half-way applications of incomplete or abandoned ideas may be added together to establish the necessary anticipation. This is a critical concept for the patent law. The Court should address it.

2. The Court Should Provide Guidelines for the Harmonization of the Patent Act with Standards in Other Federal Laws Concerning the Suitability of New Devices Offered to the Public, Particularly in the Field of Safety.

This case presents the Court with an excellent opportunity to instruct those concerned with patents—Patent Office and lower courts alike—on the criteria that should be applied in those situations where other statutory provisions enacted for the welfare of the public may also be relevant. This case involves a patent on an opposed cylinder fixed caliper disc brake, intended for use in automotive vehicles where human safety is inevitably involved. It would provide the Court with a uniquely appropriate context in which to require the lower courts and the Patent Office to give full effect to the expressed intent of the Congress

relating to health, welfare and safety as found in such statutes as the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381, et seq.[8]

By its terms, the Act declares it to be the purpose of the Congress to reduce traffic accidents and deaths and expresses Congressional determination that safety standards be established for all motor vehicles and equipment. § 1381. The Secretary of Transportation is, therefore, authorized to adopt appropriate motor vehicle safety standards. § 1391. And the Secretary has, pursuant to such authority, adopted a comprehensive series of brake standards. Through August 30, 1974, the standards developed by the Society of Automotive Engineers are incorporated by reference in 49 CFR § 571.105. SAE standards were applied by the industry even in advance of the 1966 Act. Next year, standards

[8] To be sure, the courts have reviewed decisions in patent interferences in which the issue was priority of invention, and in which they accepted as the first actual reduction to practice devices that would have failed to meet the stringent safety requirements of Underwriters' Laboratories or similar agencies. See, e.g., *Clark* v. *Buffum*, 51 App. D.C. 212, 277 Fed. 611 (App. D.C. 1922); *Etten et al.*, 121 F.2d 137 (3d Cir. 1941); *Taylor* v. *Swingle*, 316 F. 914 (CCPA 1943). However, those cases were decided well prior to the enactment of the Patent Act of 1952 and, of course, long before the recent intensive preoccupation on the part of the Congress with matters as highway safety, as evidenced by the National Traffic and Motor Vehicle Safety Act of 1966. Petitioner also notes that in an interference context, one court noted: "The courts have observed that there is a great deal of difference between the requirements of a reduction to practice and the requirements made in the auto industry for a commercially practical device." *GM Corp.* v. *Bendix Aviation Corp.*, 123 F. Supp. 506, 520 (N.D. Ind. 1954). Petitioner respectfully suggests this is precisely the type of reasoning that should be overruled by this Court. Moreover, cf. *McKenzie* v. *Cummings*, 24 App. D.C. 137 (1904), where the court held that an experimental voting machine that failed to register as often as once in a hundred times was not an actual reduction to practice, although its physical embodiment fully conformed to the counts (claims) in question.

developed by the Department of Transportation, itself, will become effective. 49 CFR § 571.105a. (These regulations are set out in full in Appendix E hereto.) Both the long-existing and new standards are replete with requirements that brakes operate repeatedly under various prescribed conditions without fading or other wise losing effectiveness. While the DOT standards were, of course, not in existence at the time Dunlop applied for its patent, much less when Goodyear was engaged in its experiments with Hawley's brake, they are cited here to demonstrate the kind of performance that is required of any device that purports to be an automotive "brake." If a brake cannot operate repeatedly without fade or other loss of effectiveness, if its development is only 75-85% complete, it cannot be considered a "brake" for the purposes of either granting or anticipating a patent. This relationship between laws concerning safety and the Patent Act—perhaps a gloss on the requirement of utility in any patent[9]—requires elucidation by this Court.

3. The Court Should Consider the Apparent Bias of the Courts of the Sixth Circuit Against Patentees Attempting to Assert Their Rights Against the Automotive Industry.

Finally, this case presents the Court with an opportunity to consider the administration of the patent law in the Sixth Circuit. Both the District Court and the Court of Appeals were asked by respondent to consider the case apart from its merits under the patent law, and to consider its economic impact on the automotive industry. Counsel on behalf of a component supplier argued that this suit was as "an effort to force the entire automobile industry in the United States to its

---

[9] Cf. *Brenner* v. *Manson*, 383 U.S. 519, 534-5 (1966). ("Unless and until a process is refined and developed to this point [of substantial utility]—where specific benefit exists in currently available form—there is insufficient justification for [granting a patent].")

knees." (Transcript, p. 28) It is, of course, impossible to assess what effect such argument had on the judgments of the lower courts. But it is an improper and unworthy argument which the courts should not entertain. Nevertheless, despite diligent research by counsel for petitioner, they have not been able to find any decision by a federal court in the Sixth Circuit since the adoption of the 1952 Patent Act in which one of the Big Four automobile manufacturers ended up losing a patent case, either where it was plaintiff or defendant. (The statistics are summarized in the chart on the facing page.) This remarkable record seems to prevail only in the Sixth Circuit and in no other Circuit of the United States; it is out of proportion to the experience of litigants in the Sixth Circuit asserting patents against infringers in industries other than the automobile manufacturers.[10] It is probably a reason for the relative dearth of cases against the industry in that circuit, although all of the Big Four are located within it. This statistical abnormality requires the attention of this Court, concerned as it is for the administration of equal justice for all.

* * *

Petitioner is filing a separate memorandum answering respondent's petition for certiorari in No. 73-816. Petitioner is conditionally not opposing that petition and supports the Court's consideration of the questions it presents if the Court also grants this petition.

---

[10] The record of the automobile industry in patent cases outside that Circuit (holdings for the patentee in 36% of the cases) and non-automotive industry cases within that Circuit (holdings for the patentee in 24% of the cases) seems consistent with the general trend in patent cases in U.S. courts. The most recent study by the Patent Office indicates that in about 30% of all reported decisions in contested patent cases the patent has been sustained. BNA, PTCJ No. 144 at F-1 (Sept. 13, 1973).

Decisions on the Merits by United States District Courts and Courts of Appeals in Which One of the Big Four Automobile Companies [1] Was Contesting a U.S. Patent [2] and Sixth Circuit Decisions Not Involving the Big Four.

	Sixth Circuit		Other Circuits		Sixth Circuit Decisions Not Involving the Big Four	
	For the Big Four	Against the Big Four	For the Big Four	Against the Big Four	For the Patentee	Against the Patentee
1952	0	0	1	1	4	23
1953	1	0	0	3	0	14
1954	1	0	1	1	6	32
1955	1	0	0	0	2	18
1956	0	0	1	0	3	17
1957	0	0	0	0	1	10
1958	0	0	1	2	4	19
1959	0	0	1	0	9 [3]	11
1960	0	0	1	0	11	20
1961	0	0	1	0	5	10
1962	0	0	0	0	4	12
1963	0	0	2	1	0	8
1964	0	0	0	0	3	20
1965	2	0	0	1	5	10
1966	1	0	4	0	5	8
1967	2	0	1	0	3	10
1968	0	0	1	0	1	6
1969	0	0	1	0	8	10
1970	0	0	4	1	3	9
1971	0	0 [4]	1	1	5	9
1972	0	0	1	1	5	5
1973	0	0	0	0	5	10
	8	0	21	12	92	295

[1] The Big Four are American Motors, Chrysler Corporation, Ford Motor Co. and General Motors. The cases include situations in which non-automotive activities of the Big Four were involved, such as *General Motors* v. *Estate Stove Co.*, 201 F.2d 645 (6th Cir.), rehearing denied, 203 F.2d 912, cert. denied, 346 U.S. 822 (1953), concerning cooking ranges built by a GM subsidiary.

[2] For the purposes of this compilation, decisions are denominated "For" and "Against" with respect to individual patents and are based upon whether that patent was found to be enforceable. Thus, decisions involving misuse, estoppel or laches are denominated "Against," as are decisions holding the patent invalid or not infringed. Cases involving less than a judgment on the merits of a

CONCLUSION

Petitioner respectfully urges the Court to hear all issues in this case on their merits by issuing a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

PETER D. EHRENHAFT
Fried, Frank, Harris,
Shriver & Kampelman
600 New Hampshire Ave.,
N.W.
Washington D. C. 20037
Tel. (202) 965-9400

ELLSWORTH H. MOSHER
Stevens, Davis, Miller
& Mosher
1911 Jefferson Davis Highway
Arlington, Virginia 22202
Tel. (703) 920-8900

JOHN A. YOUNG
127 West Berry Street
Fort Wayne, Indiana 46802
Tel. (219) 742-6214

December 21, 1973 *Attorneys for Petitioner*

---

patent are not included in this analysis. Decisions of the District Courts and Courts of Appeals are counted separately.

[3] *Sperry* v. *Aluminum Company of America*, 171 F. Supp. 901 (N.D. Ohio), has been included as a decision "For the Patentee" as only one claim out of eight contested claims of U.S. Patent 2,398,701, was held invalid.

[4] Not included is *Kolene Corp.* v. *Motor City Metal Treating, Inc.*, 440 F.2d 77, cert. denied, 404 U.S. 836 (1971), in which the Sixth Circuit held an alien's patent used by the auto industry valid and infringed. However, the patentee did not assert the patent against the automobile producers who used the patented process, making the issue moot as to them. See 440 F.2d at 83-84.